IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2794 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LALIT N PAREEK

Versus

STATE OF GUJARAT

Appearance:

MR SS PANESAR for Petitioners

MR BY MANKAD APP for Respondent No. 1

MR BD KARIA for Respondent No. 2

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 17/11/2000

ORAL JUDGEMENT

The petitioners who are the accused in Criminal Case No. 1712 of 1992 which is pending on the file of the learned Metropolitan Magistrate, Court No.20, Ahmedabad, (who will be referred to as the learned Magistrate) have by filing this Criminal Misc. Application under Sec.482 of the Criminal Procedure Code, 1973 (for short the "Cr.P.C."), requested this Court to quash and set aside the process issued against them in aforesaid Criminal Case No. 1712 of 1992.

2. In this petition, the petitioners are the accused, while the respondent no.2 is the original complainant in aforesaid Criminal Case No. 1712 of 1992.

3. The facts leading to this present petition, in a nut shell, are as follows:

The accused no.1 is permanently residing abroad at America and around the date of filing the complaint, he had come to India. Accused no.2 is the brother of the accused no.1, while accused no.3 is a relative of accused no.1. Accused no.3 was holding a power of attorney for and on behalf of the accused no.1. Around date of complaint, accused no.2 was a power of attorney holder of accused no.2. It is the case of the complainant that accused no.1 and he himself were studying in College and the complainant knows accused no.1 since the date of filing the complaint. Accused no.1 is an owner of one residential premises bearing Tenement No.387 in Block No.83 situated in Sarswatinagar, Satellite, Ahmedabad. The complainant was looking after and taking rent of that residential premises of accused no.1 since 1971. As per complaint, that residential premises was in charge of the complainant. Meantime, the accused no.1 had a talk with the complainant that he wanted to sell out that residential premises. The brother of the complainant told the accused no.1 that if accused no.1 was ready to dispose of the property by taking a reasonable price, he (complainant) was prepared to purchase it. In continuation of that talk, ultimately accused no.1 agreed to sell that residential premises to the complainant for a price of Rs.3,10,000/-. As against that consideration, the complainant gave one cheque dated 26/11/1990 for Rs.5,000/- to the accused no.2. For agreement, one Banakhat was executed by accused no.3 who was a power of attorney holder of accused no.1 in favour of the complainant. It was one of the terms and conditions of

that Banakhast that on execution of final sale deed, remaining amount of consideration would be paid by the complainant. The complainant was awaiting for final sale deed being executed by accused no.1. The complainant inquired from accused nos. 2 and 3 for execution of final sale deed and both were telling him that accused no.1 has revoked power of attorney given to them. It is a specific case of the complainant that on visit to India by accused no.1, the complainant contacted the accused no.1 and on inquiry being made from accused no.1, accused no.1 has turned down from his promises and he said that he was not ready to sell his property. The brother of the complainant lodged his private complaint against the present three accused on 27/2/1992 on the ground that from the very beginning, accused had no intention to sell the property and inspite of such intention, they recovered Rs.5,000/- from him and that according to the complainant, accused had committed the offences punishable under Secs. 406 and 114 of the Indian Penal Code.

4. After taking verification of complaint on oath, the learned Magistrate took cognizance against the accused by ordering to issue summons against accused for offences punishable under Secs. 406 and 114 of the Indian Penal Code.

5. Being aggrieved against and dissatisfied with the order of taking cognizance and issuance of process, the original accused have preferred this application under Sec.482 of Criminal Procedure Code, 1973 with a request to quash the proceedings initiated against them.

6. Heard Shri Y.S.Lakhani, the learned advocate for the petitioners, Shri B.Y.Mankad, the learned APP for the State - Respondent no.1 and Shri Tejash Karia, the learned advocate for the respondent no.3 in detail at length. I have gone through the copy of the complaint which is annexed to this petition.

7. Shri Y.S.Lakhani, the learned advocate for the petitioners has argued that looking to the contents of the complaint, it is a clear cut case of dispute with regard to breach of contract and it cannot be termed as a case of cheating or misappropriation of money. Looking to the contents of the complaint, it clearly appears that there is a civil dispute in between the parties. During the course of arguments, Shri Lakhani has furnished a copy of plaint of Civil Suit No.1013 of 1992 filed in the City Civil Court, Ahmedabad. As per that copy of plaint, present revision opponent no.2 i.e. original complainant

has filed civil suit against the present revision petitioners i.e. accused for perpetual prohibition injunction restraining the defendants from disposing of and/or selling the suit property described in Para 3 of the plaint and also for a decree of mandatory injunction directing the defendants to execute the sale deed in favour of the plaintiff. In short, the original complainant in his capacity as the plaintiff prayed for a decree for specific performance of the said Banakhat alleged to have been executed on or about 26th November, 1990.

8. Shri Lakhani has argued that the complainant lodged his complaint on 27/2/1992. Before that he had already filed aforesaid Civil Suit No.1013 of 1992 against the present revision petitioners on or about 20/2/1992. Thus, the complainant was in know of the fact that he had already filed the suit in the civil court.He has vehemently argued that when the petitioner has moved this court by filing application under Sec.482 of Cr.P.C.. requesting this Court to exercise inherent discretionary powers vested in this Court, the complainant ought to have stated in his complaint that he has already filed a civil suit against the accused. Thus non-mentioning of fact regarding civil suit having been filed by him, in the plaint shows that the complainant was in know of the fact that dispute in between the parties was of civil nature and not of a criminal nature. He has argued that the complainant has, after filing the suit, lodged the present complaint with a view to bring pressure on the accused to arrive at a compromise in the civil suit. He has further argued that the complainant cannot use forum of criminal court by lodging a complaint for using it as a liver for bringing pressure on the accused. He has cited following four authorities in support of his case-

(1) Shri Lakhani has firstly cited an authority of TRILOK SING AND OTHERS VS. SATYA DEO TRIPATHI, reported in AIR 1979 SUPREME COURT 850. In that case, there was a dispute between the parties related to purchase of a truck by the complainant. A Hire Purchase Agreement was entered into between the financier and respondent Corporation/accused appellant. A loan was payable by monthly installments. According to the agreement, on default of any one instalment, the financier has right to terminate the agreement without notice, and seize the truck. The complainant's case was that only a blank form was got signed by him and that on default of the third instalment, the truck was forcibly seized and removed by the appellants. The respondents filed a complaint

against the appellants in this connection for certain offences. In that complaint, the learned Magistrate directed to issue process of summons. The appellants moved an application under Sec. 482 of Cr.P.C. It was held that

> The proceeding initiated was clearly an abuse of the process of the Court. It was not a case where any process ought to have directed to be issued against the accused. On the well-settled principles of law, it was a very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct."

8. Shri Lakhani has cited another authority of MADHAVRAO JIWAJI RAO SCINDIA AND ANOTHER ETC. VS. SAMBHAJIRAO CHANDROJIRAO ANGRE AND OTHERS, reported in AIR 1988 SUPREME COURT 709. In this case, it has been held as under:

> " The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

(3) Shri Lakhani has cited another authority in case of RAMANLAL PARSOTTAMDAS CHOKSI AND OTHERS vs. STATE OF GUJARAT AND ANOTHER, reported in 1993(2) GLH (UJ) 28, on Page 52. In this case, it has been held that looking to the facts and circumstances of the case, complainant in that case did not disclose any offence and real dispute between the parties was of a civil nature and ultimately, this Court quashed the proceedings issued against the

accused. It cannot be gainsaid that matter relating to dispute of a civil nature cannot be allowed to be fought in the criminal court.

(4) Fourth authority cited by Mr. Lakhani, the learned advocate for the revision petition is HRIDAYA RANJAN PD. VERMA & ORS. VS. STATE OF BIHAR AND Anr., reported in JUDGMENT TODAY 2000(3) SC 604. In that case, appellants had agreed to sell land in village. Sale deed was executed. Two other partners of appellant had signed that sale deed as witnesses. Possession of land was delivered to the purchaser on registration of sale deed, cheques were issued by the Secretary of the Society i.e. the purchaser. All cheques were dishonoured. Prior to sale, another brother of appellants filed a suit for partition, and had obtained orders of status quo with regard to property, except the land in question. Attempts were made to secure payments of cheques but that attempts turned futile. Thereafter, complaint was lodged for offences punishable under Secs. 406-420 and 120B of I.P.Code. That complaint came to be investigated and ultimately chargesheet was filed against the appellants. That complaint was filed by the Secretary of the Society i.e. purchaser. The Hon'ble Supreme Court has held as under:-

> " Facts of the case warrant quashing of the proceedings, as the complaint does not disclose intention of the cheating on the part of the appellants and that if complaint is ordered to be continued, it would be an abuse of process of law. In this case, while determining the question, it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is different one. It depends upon the intention of the accused at the time of inducement which may be judged by subsequent conduct but for this subsequent conduct is not the sole test. It has been specifically held that mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction."

9. Here in this case, looking to the complaint, it is not the case of the complainant that accused were not known to him. As per complaint, accused no.1 was known by him since 30 years before the date of lodging of the complaint. Accused no.1 had entrusted the residential premises to complainant for taking due care. The complainant was looking after and taking care of that

premises. Under the circumstances, the complainant entered into a contract to purchase the property from the accused no.2. Banakhat was executed and as against that price of Rs.3,10,000/-, the complainant paid Rs.5,000/by cheque. If we peruse the verification made by the complainant below that complaint, we find that the complainant has only stated that accused no.3 who was a power of attorney holder for accused no.1 had entered into an agreement with the complainant for purchase of the property and the complainant paid the amount. He has further stated in his verification part of the complaint that accused had committed an offence of criminal breach of trust and cheating by stating that they did not want to sell the property. He has nowhere stated in that verification part of the complaint that from the very beginning, intention of accused nos. 1 and 3 was to cheat the complainant by taking money from the complainant.

10. In view of this, looking to the facts and circumstances of this present Misc. Criminal Application and in view of the legal position discussed hereinabove, this is a fit case in which this Court must exercise inherent discretionary power so as to prevent further abuse of process of law.

11. Under the circumstances, this Misc. Criminal Application requires to be allowed, and accordingly, it is allowed. The proceedings initiated against the present petitioner by taking cognizance below complaint in Criminal Case No. 1712 of 1992 is quashed and set aside. Rule is made absolute accordingly. Interim relief granted earlier is also made absolute.

Date:17/12/2000. (H.H.MEHTA,J.)
ccshah